

## **REMARKS/ARGUMENTS**

1. Applicants gratefully acknowledge that the Examiner has allowed claims 4-6, 8-11, and 13-18.

### **Introduction**

2. The security holster designed by the applicants is different from the prior art in several respects. The applicants' security holster is the only holster that we found in the prior art in which a user has to insert a finger in order to reach the release for the security lock. The holster of the invention also utilizes the ejection port of the security holster in order to secure the handgun in the security holster. We have performed an exhaustive search of the prior art, and found that security holsters fall into several general categories. The largest category is security holsters that utilize the trigger guard as the handgun feature that is secured by the security holster. Use of a trigger guard is a logical approach to designing a security holster. As can be seen in the photographs below, both revolvers and semi-automatic handguns have a trigger guard. It is located towards the front of the gun and would be a very accessible feature as the gun enters into a security holster. Thus, it is not surprising that the great majority of security holsters utilize a trigger guard as a feature that is secured. In recent years, revolvers have become less and less favored for use by law enforcement officers. More often than not, some version of a semi-automatic handgun is utilized. Along with increased use of a semi-automatic handgun, there has developed increased use of accessories with the handgun. These include flashlights and laser sighting devices, which are mounted below the barrel of a semi-automatic handgun. This placement blocks access to the trigger guard for security holsters. Suddenly using the trigger guard as the feature to lock the handgun in place is no longer very desirable.

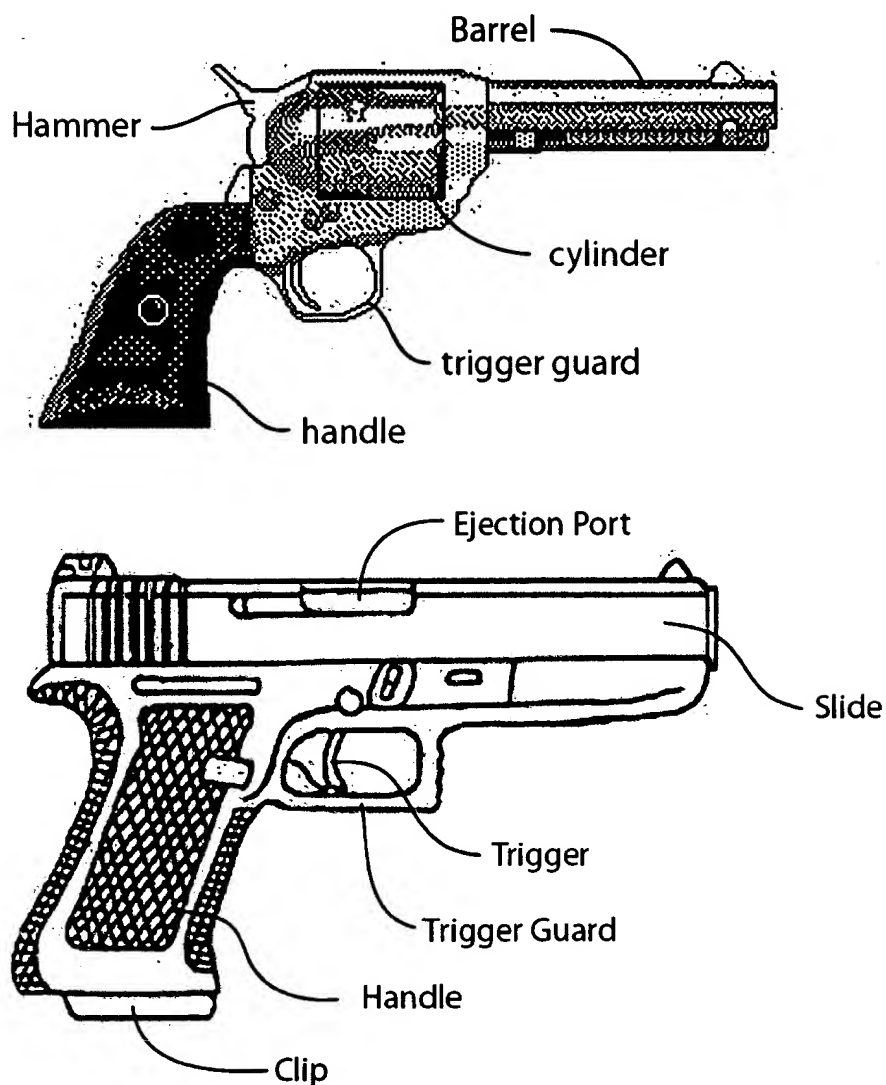
3. The applicants' security holster is the only holster that we have found that utilizes the ejection port of a semi-automatic handgun to secure the handgun in the holster. This is significant because, by using the ejection port, security holsters can be designed that allow the holstering of handguns with attached accessories.

4. We have performed an extensive search of the prior art, which has submitted for your review. In that search, several security holsters were discovered that do in fact utilize the ejection port in some way. The way that they use the ejection port is quite different than the mechanism that the applicants utilize.

5. The applicants' design has several other features besides the finger tube and use of the ejection port, which we feel are unique. Another feature is that the handgun can be inserted straight into the security holster, pressed down with sufficient force, and locked in place using the ejection port. We do not think that there are any prior art patents that do this. Another difference is in the withdrawal of the handgun from the security holster. In the security holster of the invention, the user presses down on the handle of the handgun while it is in the holster, presses on the release tab, and withdraws the handgun out of the holster. We do not know of any prior art devices that do that.

6. The responses to the claim rejections presented below are presented in the context that our finger tube, use of the ejection port, and insertion and release means are completely different than the prior art. We are entitled to claims addressed to those features being allowed unless there is prior art that anticipates or makes these features obvious.

7. One unique innovation of this security holster is that it engages the ejection port of a semi-automatic pistol. Most of the prior art security holsters engage the trigger guard of either a revolver or a semi-automatic pistol. These two types of handguns are shown in the figures below.



8. The use of the trigger guard is a logical approach, because the trigger guard is easily accessible towards the front of the gun, and provides a strong feature to grip, and makes a very positive attachment possible.. Engaging the ejection port is less desirable because it is harder to achieve a positive attachment for a security holster. However, the inventors realized that using the trigger guard as a feature to lock onto provides problems for holster makers. More and more, police officers are using handguns which have devices attached to the underside of the barrel or to the front of the trigger guard. These include flash lights and laser sighting devices. The ease of access to a trigger guard as a locking feature suddenly becomes handicapped when a flashlight or a laser sighting device obstructs access to the trigger guard. The security holster of the invention solves that by not attaching to the trigger guard. The unusual nature of this approach is evidenced by the prior art in which almost all of the prior art attempts to attach to some other feature than the ejection port. They attach to the trigger guard, the edge of the cylinder, or the back of the handle. Very few patents in the prior art utilize the ejection port and those that do have been pointed out to the Examiner. Our use of the ejection port is not found in the prior art, and Gallagher and Franz are not even close.

9. Due to the utilization of the ejection port and the way in which this engagement is claimed, all of the claims of the patent which utilize the ejection port are allowable.

10. We also feel that the finger tube is totally unique in the prior art, and any claim which contains the feature of the finger tube cannot be rejected under §102 unless prior art is found which has a finger tube protecting the release tab of a security holster. This is further discussed below in reference to Gallagher.

11. We also feel that the insertion and withdrawal steps of this invention are unique. There are claims directed to these steps, which can't be rejected without citing prior art.

#### **Summary of Changes in Claims**

12. Claim 1 has been changed to include the limitation that the finger tube is parallel with the long axis of the holster. This change was discussed with the Examiner in a meeting on Feb 3, 2004.

13. Claim 2 has been amended to correct an antecedent basis problem.

14. Claim 3 has been amended to depend from claim 1, and to be specific to a semi-automatic handgun.

15. Claim 7 has been amended to depend from claim 6.

16. Claim 12 has been deleted.

17. Claim 13 has been amended to depend from claim 1, and to be specific to a semi-automatic handgun.

18. Claim 14 has been amended to remove the reference to a notched side of the locking tab.
19. Claims 19-21 have been deleted.
20. Claims 23-50 have been renumbered to 22-49. The references in those claims to other claims have been changed.
21. Claim 24 has been amended to depend from claim 23.
22. Claim 28-29 have been deleted.
23. Claim 32 has been amended to state that the holster body has a passage adjacent the ejection port, and the locking tab passes through the passage to engage the ejection port of a handgun. This change was discussed with the Examiner in a meeting on Feb 3, 2004.
24. Claim 36 has been amended to depend from claim 32.
25. Claim 38 has been amended to depend from claim 32.
26. Claim 41-42 have been deleted.
27. Claim 45 has been amended to include the limitation of claim 1 that the finger tube is parallel to the long axis of the holster. This was discussed with the Examiner in the interview of Feb 3, 2004.
28. Claim 47 has been deleted.
29. Claim 50 has been amended to depend from claim 1 and it is identical to previous claim 5.
30. Claim 51 has been added, and is identical to previous claim 10, except that claim 51 depends from claim 1.
31. Claim 52 has been added, and is identical to previous claim 16, except that claim 52 depends from claim 1.
32. Claim 53 has been added, and is identical to previous claim 26, except that claim 53 depends from claim 1.
33. Claim 54 has been added, and is similar to previous claim 45, except that claim 54 does not include the limitation that the finger tube is parallel to the holster long axis, but does include the limitation of claim 32 that the holster has a passage adjacent the ejection port, and the locking tab passes through the passage to engage the ejection port of a handgun. This form of claim 45 was discussed with the Examiner in a meeting on Feb 3, 2004.

### **Claim Rejections under 35 USC §112**

34. The Examiner has rejected claims 28, 29, 41, 42, and 47 under 35 USC §112, first paragraph as containing subject matter that was not described in the specification in such a way so as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the Examiner maintained that in claims 28, 29, 41, and 42 that the term "tactile indication of locking" is not described in the specification.

35. The claims related to tactile indications of locking have been removed from the application. Claim 47 has been canceled.

36. Applicants therefore respectfully request that this rejection be withdrawn.

37. The Examiner has rejected claims 2, 3, 7 and 32 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicants regard as the invention.

28. These claims have all been amended to correct the problems associated with antecedent basis which were pointed out by the Examiner. Acceptance of these amendments and reconsideration of these claims is respectfully requested.

### **Claim Rejections 35 USC §102**

39. The Examiner rejected claims 1, 2, 23, 24, 27 and 31 as being anticipated by Gallagher.

40. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 828 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). MPEP § 2131.

41. None of the references cited by the Examiner are configured for locking interaction between a holster and an ejection port of a handgun. This is one of the novel features of the present invention.

42. Additionally, none of the references cited by the Examiner contain a finger tube or sheath that is connected to the holster and is configured to shield, sheath, and prevent activation of the release tab by unauthorized persons.

43. Claim 1 has been modified as discussed with the Examiner to claim orientation of the

finger tube as being parallel with the long axis of the holster.

44. The Gallagher reference, U.S. Patent No. 5,512,155, is a holster lock. The holster lock of Gallagher is a generally wedge shaped device that contains a channel (30). The wedge shaped device (14) is built into a holster (12), with the channel (30) oriented in such a way that the trigger guard of a handgun slides into the channel (30), where it is locked in place. The wedge shaped device of Gallagher is covered by the material of the holster, as shown in Fig. 3. As the Examiner notes, Gallagher includes a locking means (28) for preventing the withdrawal of a handgun. A releasing means for releasing the locking means by the user's index finger and a biasing spring (44) are also present.

45. However, the Gallagher device does not describe nor teach a finger tube as this tube is utilized in the present patent application. Therefore, the Gallagher device cannot anticipate the present invention.

46. Examiner is incorrect in stating that the stovepipe device 70 of the Gallagher patent is a finger tube as such a term is defined in the present application.

47. The meaning and interpretation of the terms that are used in the claims are determined in light of the specification. The specification describes the finger tube as having a distinct structure different from the stovepipe device that exists in the Gallagher reference.

48. The stovepipe device 70, shown in the Gallagher device, is simply a cover that encircles the edges of the button 25. This device does not sheath or guard the device as is shown and claimed in the present invention. The locking device of Gallagher is released by the user pressing a button (25), in a direction (A). As shown in Fig. 3, the button (25) is located on the exterior of the holster and may be depressed by the wearer of the holster, or someone standing to the side of the person, or someone standing in front or behind the person wearing the holster. The stovepipe 70 is simply a piece that surrounds the sides of the release button, but allows access to the release button in a generally horizontal direction.

49. The configuration of the stovepipe 70 prevents activation of the button 25 in a vertical direction, however, the stovepipe 70 allows for activation of the release button by a party pressing the release button in a generally horizontal direction. This is exactly contrary to the configuration of the finger tube that is set forth in the present invention.

50. The finger tube of the present invention requires insertion of a finger in a vertical orientation within the tube, but then requires a generally horizontal movement of the finger against the release tab in order for the release tab to be activated. The Gallagher device does not teach any such feature or combination of features.

51. The locking release of the present invention is contained within a finger tube 46 that is clearly visible in Figs. 4A and 4B. In these Figures, finger tube 46 is clearly visible as it would be looking down into the holster, with the release tab 26 available for depression by the user. The finger tube covers the release tab and prevents the release tab from being actuated or moved

by a person other than the person wearing the holster.

52. If the holster of the present invention is worn by a right handed user, a right handed person standing to the user's right, would have a difficult time inserting his right hand into the finger tube of the invention, because he/she would have to reach across his/her body. If a person were standing in front of the wearer of the holster, facing the wearer, he/she would also have to reach across the wearer's body to insert his/her right hand. It would be very difficult to depress the release tab 26 with a facing person's right hand. He/she could reach into the holster directly with the left hand, but the part of the holster that contained the slide of the handgun would also make that difficult, due to the partial blockage. A person behind the wearer of the holster could extend a finger of his/her right hand into the finger tube 46.

53. However, each of these releasing actions by another person is made much more awkward by the release tab 26 being shielded by the finger tube 46. In a struggle for a weapon, which a police officer might face, it would also be much more difficult for an assailant to release the officer's handgun from a holster of the invention because of the finger tube. During a struggle, the holster would not be standing still, but would be moving with the officer's body. Since the material of the finger tube is rigid, an assailant risks having his finger broken or injured in the finger tube during a struggle for the weapon in the holster. Besides controlling access to the finger tube by moving his/her body, the officer could simply place a hand over the first arm 20 of the lock, and prevent the handgun from being withdrawn by an assailant. For these reasons, the finger tube 14 of the present invention is an important security feature.

54. There is an additional feature that the holster of the present invention has, and which Gallagher does not have. In order to release a handgun from the locking holster of Gallagher, a person has to press down on a button with his/her index finger, while at the same time removing the gun from the holster. This could conceivably be done by the other fingers of the hand, but would be somewhat awkward if the index finger could not move from the button. This problem is solved in the holster of the present invention by the releasing means being an elongated tray on which the user's finger can slide. Thus, the user can depress the releasing means, release the handgun, and remove the handgun from the holster while his/her finger slides along the finger tray, and maintains the releasing mode of the releasing means. This results in a much more natural release and draw of the handgun from the holster.

55. The Gallagher patent does not teach any of these features. Therefore, the Gallagher device cannot anticipate the present reference as a matter of law.

56. For the reasons above, including the change made to claim 1, the Applicants request the allowance of rejected claims 1, 2, 23, 24, 27, and 31. All of these claims depend from claim 1.

57. The Examiner has rejected claims 1-3, 23, 24, 32, 34, 35, 38, 45, and 48 as having been anticipated by Franz.

58. Claim 1 has been modified as noted above, and those claims that depend from claim 1 should now be allowable, which from the claims listed in the paragraph above, includes claims 2, 3, 23, and 24.

59. Claim 32 has been modified to define the holster body as having a passage, through which the locking tab passes to move into engagement with the ejection port. As discussed with the Examiner, this differentiates the holster of the present invention from Franz.

60. Claim 45 has been modified to include the limitation currently added to claim 1, that the finger tube has an axis parallel to the long axis of the holster body.

61. The Franz device teaches a holster with a locking tab that is positioned for to engage a part of a handgun such as a part of the revolving cylinder. Most of the claims of the present invention are configured for use with firearms that have ejection ports. The device taught in the Franz patent is configured for use with revolvers that have cylinders and that do not have magazines or ejection ports as the guns for which the present invention is intended to function with. Thus as a preliminary matter the Franz device is not analogous prior art.

62. Furthermore, the Franz device does not teach, include, or describe a finger tube, which is included as a part of claim 1 and which has been previously discussed in this application. The Franz device does not include this feature and therefore cannot anticipate this invention as a matter of law.

63. Furthermore, the Franz device does not describe a variety of other features, which are present in the claims that the Examiner has rejected in view of this reference.

64. These features include:

- a release tab;
- a finger tube enclosing said release tab, in which a user must insert a finger in order to activate said release tab to release said locking tab from said handgun feature;
- a release tab that is configured to engage an ejection port of a firearm;
- a release tab that is located in a position to be adjacent to and covering the trigger of a handgun when the handgun is inserted and secured in the holster body;
- a locking tab that is configured to provide an audible indication of locking;
- a release tab that is an elongate tray, semicircular in cross section, providing a curved shape which conforms to a user's finger;
- a release tab is activated by flexion of said user's index finger, for one finger release and straight out withdrawal of said handgun from said holster body;
- a tactile indication of locking, which signals by tactile signal to a user that said handgun is secured in said holster body, so that said user



need not listen to or look at said security holster to verify that said handgun is secured;

a locking tab, which is configured to snap into place with an ejection port of a first arm, the locking tab configured to provide a tactile indication of locking;

a finger tube having a flared rim for facilitating insertion of said users index finger into said finger tube.

65. Reference is made specifically to claim 32. The elements of claim 32 include a holster body, a locking tab which engages the injection port of a handgun, a release tab, and one handed insertion of a handgun into the security holster. Franz clearly does not provide for engagement with the ejection port, because the locking mechanism of Franz interacts with a cylinder of a revolver. A revolver has no ejection port, therefore as a matter of law, Franz cannot be anticipatory of claim 32.

66. Since the Franz device fails to teach any of these features, Applicants respectfully submit that the Franz device does not anticipate the present invention as a matter of law.

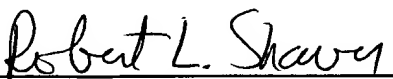
### **CONCLUSION**

Applicants now believe the application is in condition for allowance and respectfully requests the same. If the Examiner feels it would advance the application to allowance, the Examiner is invited to telephone the undersigned at the number given below.

Reconsideration and allowance of the application as amended is respectfully requested.

DATED this 9<sup>th</sup> day of February 2004.

Very respectfully,

  
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CERTIFICATE OF MAILING

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Shannon M. Wilson

